IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

Crl.MC.No. 625 of 2007()

AGAINST THE ORDER IN CRMP 18/2007 IN
SC.885/2006 of SPL.COURT (NDPS ACT CASES), VADAKARA

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PETITIONER: ACCUSED NO.7

BABU VARGHESE, S/O.VARGHESE,
AGED 52, FLAT NO.401, WOODLAND APARTMENT,
JAGATHY,THIRUVANANTHAPURAM.

BY ADV. SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN
SRI.ANIL K.MOHAMMED

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.625 of 2007

Dated this the 9th day of March 2007

O R D E R

The short grievance of the petitioner is that a sessions trial in a grave crime is listed for trial by the learned Sessions Judge (Special Court (NDPS Act cases) without and before considering the grievance of the petitioner and making appropriate arrangements for furnishing copies of the relevant documents to the accused persons. It is submitted that when committal was made, the petitioner was in prison and he was not able to specifically verify whether copies of all documents have been furnished. Complaint was made before the learned Sessions Judge after committal that copies of relevant documents have not furnished. Without and before disposing of that petition finally, which is filed as Crl.M.P.No.18/07 accepting the submission that the learned Public Prosecutor offers to furnish the available copies, that petition was closed. Charges have been framed on 22/02/2007 and the case has been listed for trial from 14/03/2007 to 19/04/2007. The petitioner has rushed to this court at this stage with the grievance that if he were compelled

to face trial in such short notice without and before furnishing copies of all relevant documents to him, that would be negation of his right to face trial. It is, in these circumstances, prayed that the learned Sessions Judge may be directed to ensure that all necessary copies have been furnished to the accused and then only commence trial.

2. The matter stand listed for trial from 14/03/2007 to 19/04/2007. The learned Sessions Judge must have arranged his work accordingly and any direction to interfere with the schedule of trial is certainly likely to cause great inconvenience to the working of the court. It was, in these circumstances that this court, when the matter was moved on 07/03/2007, called for a report of the learned Sessions Judge. The learned Sessions / Special Judge was specifically directed to ascertain whether copies have been given; if not, why copies have not been given and if it is not so far given, forthwith ensure that copies are made available to the accused.

3. I have received the report of the learned Sessions Judge dated 08/03/2007. I have gone through the same in detail. I am satisfied, after perusing the report and the copy of the order

sheet that there is merit in the grievance raised by the petitioner. The charges were framed on 22/2/2007 and the matter stands posted to 14/03/2007. The petitioner's grievance about non-receipt of copies has not been pointedly considered also. In these circumstances, though dissatisfied that the trial listed may have to be adjourned, I am satisfied that the interests of justice demand that the learned Sessions Judge must be directed to re-schedule the trial and post the case for trial only after ensuring that the accused are furnished with copies of all relevant documents. It is true that this function ought to be discharged by the learned Magistrate at the stage of committal under Section 209 Cr.P.C. But in a case where the accused makes a grievance that such copies have not been furnished, it is certainly for the learned Sessions Judge also to ensure that all copies have been furnished. This is the mandate of the principles of fair trial and merely because that the learned Magistrate must have done it at the stage of 209 Cr.P.C, the learned Sessions Judge cannot abdicate his powers and duties to ensure furnishing of such copies. It is atleast evident now that copies of the proceedings of the Test Identification parade have

not been furnished to the accused at the stage of Section 209 Cr.P.C. That is evident from the report of the learned Sessions Judge.

4. It is, in these circumstances, directed that the learned Sessions Judge must pointedly consider whether copies of all relevant documents have been furnished to the accused. He must ensure that they are furnished.

5. In the result, this Criminal Miscellaneous Case is allowed. The learned Sessions/Special Judge shall re-schedule the trial. The trial shall commence only after elapse of a period of one month from the date on which the learned Magistrate ensures and records that the accused have been furnished with all necessary copies.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006